IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 2228 of 2005

Between:

Osuri Devendra Phanikar, S/o. Gangadharam, Hindu,
Resident of 18 Ward, Narasapur, West Godavari District.

..... PETITIONER

AND

1 The Additional Director General of Police, Criminal Investigation Department, D.G.P.Office Complex, Lakadikapool, Hyderabad.
2 The Superintendent of Police, West Godavari at Eluru
3 The Station House Officer, Narasapur Town Police, Narasapur, West Godavari District.
4 The Station House Officer, Palakol Town Police Station, Palako, West Godavari District
5 Osuri Sitha Ram Lakshmi, W/o. Radha Phanikar, Hindu,
Resident of 18th Ward, Narasapur, West Godavari District.
6 D.S. Murthy, S/o. late Rama Rao, Hindu,
Commissioner of Marketing, Lower Tank Bund, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, or any other appropriate writ, declaring the action of the respondents 3 and 4 police in referring Crime Nos. 173/03 and 174 of 2003 respectively as illegal, arbitrary and declaring the action of the 3rd respondent police in filing the false charge sheet against the petitioner in PRC, No. 36 of 2004 on the file of the court of the Addl. Judicial First Class Magistrate, Narasapur, West Godavari District in Crime No. 123 of 2004 as illegal, arbitrary and violative of Art.21 of the constitution of India and it is further consequentially prayed that this Hon'ble Court may be please to direct the respondent No.1 to forthwith withdraw the Crime No. 173 of 2003 and

Crime No. 174 of 2003 and Crime No. 123 of 2004 (PRC No. 36 of 2004) on the file of the respondents 3 and 4 respectively and take up investigation and file appropriate charge sheet in the appropriate Court after due investigation.

Counsel for the Petitioner:PARTY-IN-PERSON

Counsel for the Respondents 1 to 4: GP FOR HOME

Counsel for the Respondent No.5: Mr. S.lakshminarayana Reddy

Counsel for the Respondent No.6: T.S.Venkataramana

The Court made the following :

ORDER:

The petitioner seeks a writ of mandamus declaring the action of respondents 3 and 4, in closing Crime Nos.173 and 174 of 2003 respectively as illegal and arbitrary. A further relief is sought to declare the charge sheet filed in P.R.C.No.36 of 2004, on the file of the Additional Judicial First Class Magistrate, Narsapur as illegal and arbitrary. Consequential directions are also sought to direct the Additional Director General of Police, 1st respondent, to withdraw Crime Nos.173 and 174 of 2003 from respondents 3 and 4 and to take up the investigation by himself.

The petitioner had presented this writ petition initially as party-in-person. Thereafter, he engaged an Advocate. Subsequently, the learned Advocate withdrew from the writ petition and the case is argued by the petitioner as party-in-person.

Heard the learned Government Pleader for Home and the learned counsel for respondents 5 and 6.

Voluminous record is placed before this Court by the petitioner in relation to several complaints made by the him, on the one hand, and the 5th respondent, on the other, against each other. The subject matter of the present writ petition is about the closure of Crime Nos.173 and 174 of 2003 filed by the petitioner as well as the correctness of the charge sheet filed in P.R.C.No.36 of 2004. So far as the closure of complaints is concerned, the Code of Criminal Procedure (for short 'the Cr.P.C.") contemplates the procedure to be followed by an aggrieved party. Once a complaint is closed as false, by the concerned investigating agency, the question of investigation by any other agency does not arise. If the petitioner is aggrieved, he has to approach the concerned Criminal Court by filing a protest petition or by invoking the jurisdiction of Courts under the relevant provisions of Cr.P.C.

This Court cannot accede to the request of the petitioner, particularly having regard to the disputed questions of fact.

So far as the charge sheet in P.R.C. is concerned, it needs to be observed that once it is filed against an accused, he has to face the trial and it is for the prosecution to establish and prove the charge. Declaring a charge sheet either as illegal or arbitrary in writ petition is unknown to law. Such a course would virtually derail the entire criminal justice system.

Hence, the writ petition is dismissed, leaving it open to the petitioner to work out his remedies in accordance with the provisions of the Cr.P.C. There shall be no order as to costs.

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17.03.2005

Jsu
To

1 The Additional Director General of Police, Criminal Investigation Department, D.G.P.Office Complex, Lakadikapool, Hyderabad.
2 The Superintendent of Police, West Godavari at Eluru
3 The Station House Officer, Narasapur Town Police, Narasaur, West Godavari District.
4 The Station House Officer, Palakol Town Police Station, Palako, West Godavari District
5 2 CCs to the G.P. for Home, High Court Buildings, Hyderabad. (OUT)

6 2 CD copies.